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7 **BEFORE THE**
8 **PHYSICAL THERAPY BOARD OF CALIFORNIA**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the First Amended Accusation Case No. 1D 2002 63089
Against:
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12 ROBERT B. GRAY II
12421 Central Avenue, Suite A&B
Chino, California 91710
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**FIRST AMENDED
ACCUSATION**

Physical Therapist License Number PT 6117
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Respondent.
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18 Complainant alleges:

19 **PARTIES**

20 1. Steven K. Hartzell (Complainant) brings this First Amended Accusation
21 solely in his official capacity as the Executive Officer of the Physical Therapy Board of
22 California, Department of Consumer Affairs.

23 2. On or about July 26, 1972, the Physical Therapy Board of California
24 issued Physical Therapy License Number PT 6117 to Robert B. Gray II (Respondent). The
25 Physical Therapist License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on August 31, 2003, unless renewed.

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JURISDICTION

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3. This First Amended Accusation is brought before the Physical Therapy Board of California (Board), under the authority of the following sections of the Business and Professions Code (Code).

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4. Section 726 of the Code states:

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AThe commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

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5. Section 2660 of the Code states:

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AThe board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

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A(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

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A(h) Gross negligence in his or her practice as a physical therapist.

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A(l) The commission of any fraudulent, dishonest, or corrupt act which is

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1 substantially related to the qualifications, functions, or duties of a physical
2 therapist.@

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5 6. Section 2661.5, subdivision (a), of the Code states:

6 A(a) In any order issued in resolution of a disciplinary proceeding before
7 the board, the board may request the administrative law judge to direct any
8 licensee found guilty of unprofessional conduct to pay to the board a sum not to
9 exceed the actual and reasonable costs of the investigation and prosecution of the
10 case.@

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12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of a Crime)

14 7. Respondent is subject to disciplinary action under subdivision (d) of Code
15 section 2660 in that he has been convicted of a crime substantially related to the qualifications,
16 functions, and duties of a physical therapist in that he was convicted of one count of sexual
17 battery of a patient. The circumstances are as follows:

18 8. On November 27, 2002, in a criminal proceeding entitled *People of the*
19 *State of California v. Robert Gray* in Superior Court of the State of California, County of San
20 Bernardino, Case Number FCH05194, Respondent pled guilty to sexual battery in violation of
21 Penal Code Section 243.4, subdivision (c), a felony. On February 5, 2003, the Superior Court
22 sentenced Respondent in *People of the State of California v. Robert Gray*, Case Number
23 FCH05194, to 120 days county jail, 36 months supervised probation, a restitution fine of \$200,
24 40 hours of community service, participation in and completion of a sex offender treatment
25 program, and suspension of his physical therapist license for the term of probation. The
26 conviction was based on the facts described in paragraphs 9 through 10, inclusive, below.

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9. On or about May 25, 2002, C.K., a female patient, visited respondent=s place of business for a physical therapy treatment (full body massage). Respondent exposed C.K.=s breasts during the massage. He massaged the area underneath and surrounding (including the sides) her breasts. While massaging her lower abdominal area, respondent moved his left hand towards C.K.=s pelvic area and touched her pubic hair. Respondent then put lotion on C.K.=s lower abdominal area and continued the massage. While moving his right hand in a circular motion, respondent pulled down C.K.=s underwear with his left hand. With the fingers of his right hand, respondent penetrated C.K.=s labia. In a circular motion, respondent massaged C.K.=s interior labia area around the base of her clitoris for approximately two to three seconds by penetrating her. At this time, C.K. terminated the massage by starting to yell.

10. As C.K. was attempting to leave the room, respondent attempted to explain to her that he was only trying to palpate the pubic tubercles to rule out subluxation. However, this was the first time in 22 physical therapy sessions that respondent expressed any concern about the pubic tubercles since beginning physical therapy on C.K. on February 21, 2002.

SECOND CAUSE FOR DISCIPLINE

(Sexual Misconduct)

11. Respondent is subject to disciplinary action under Code section 726 in that he engaged in an act of sexual misconduct with a patient. The circumstances are as follows:

12. The facts and allegations in paragraphs 7 through 10, inclusive, are incorporated here by reference.



THIRD CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent is subject to disciplinary action under Code section 2660,

1 subdivision (h), in that he was grossly negligent in his treatment of C.K. The circumstances are
2 as follows:

3 14. The facts and allegations in paragraphs 7 through 10, inclusive, are
4 incorporated here by reference.

5 15. According to the physical therapist expert=s review of the records,
6 Respondent=s acts and omissions in the care and treatment of patient C.K., singularly or
7 collectively, constituted gross negligence in that:

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9 a. He committed an act of sexual misconduct upon C.K.

10 b. He failed to document on any patient record before the one on
11 May 25, 2002 any concern about the pubic tubercles or their potential
12 subluxation.

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14 FOURTH CAUSE FOR DISCIPLINE

15 (Commission of a Corrupt Act)

16 16. Respondent is subject to disciplinary action under Code section 2660,
17 subdivision (l), in that he committed a corrupt act which is substantially related to the
18 qualifications, functions, or duties of a physical therapist. The circumstances are as follows:

19 17. The facts and allegations in paragraphs 7 through 10, inclusive, are
20 incorporated here by reference. 

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

- 1. Revoking or suspending Physical Therapist License Number PT 6117, issued to Robert B. Gray II;
- 2. Ordering Robert B. Gray II to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 03/18/03

Original Signed By
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

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